THE HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION No.5613 of 2006

DATE: 09.10.2007

Between:

P. Krishna Rao

... PETITIONER

AND

The Director of Collegiate Education
Nampally, Hyderabad & others.

... RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

WRIT PETITION No.5613 of 2006

ORDER:-

By this writ petition, the petitioner seeks a writ of mandamus to declare the action of respondents in not absorbing his services into sanctioned grant-in-aid post as illegal and arbitrary, and consequently direct the respondents to admit his name into grant-in-aid and absorb him in the said post.

The petitioner is a post-graduate in Commerce. He joined as part time lecturer in the 3rd respondent college in the year 1999 and since then he is working in the said post. The 3rd respondent college is an aided private institution. The petitioner states that six posts were sanctioned to the Commerce Department, and out of the said posts, one post is lying vacant since the date of his joining. The petitioner states that he has been working in the said post since the date of his appointment, and as such, he is entitled for regularization/absorption of his services in the said grant-in-aid post, and the action of respondents 1 and 2 in not admitting his name in grant-in-aid, is illegal and arbitrary. Hence, he filed the present writ petition.

This Court, on 21.03.2006, while admitting the writ petition, directed the respondents to continue the petitioner in service on the same terms and conditions that existed as on the said day.

On behalf of the 1st respondent, Dr. D. Vijaya Prasad, Joint

Director of Collegiate Education, filed a counter-affidavit stating that the 3rd respondent has appointed the petitioner temporarily without following the procedure prescribed under the Rules, that too while the ban on temporary appointments imposed vide Act 2 of 1994 was in force, and as such, the petitioner has no right to seek regularization of his services. As per the provisions of the said Act, the person responsible for making appointments despite existence of ban, is liable for punishment. In support of this contention, he placed reliance on the judgment of the Supreme Court in **Secretary, State of Karnataka v. Uma Devi**[1]**,** wherein it was held that a person who is appointed on contract basis without following the procedure and the Rules is not entitled for regularization. He contended that the petitioner was not paid regular scale, but was paid remuneration on hourly basis. The petitioner is not entitled to the benefit of the provisions of G.O. Ms. No.212, dated 22.01.1994, for the said G.O. is not applicable to teaching staff. The petitioner is also not entitled to the benefit of regularization of his services in terms of G.O.Ms.No.328, dated 15.10.1997, because he has not completed three years of service as on 31.07.1991 and five years of service as on 25.11.1993. As on today, there is no scheme in existence, which provides for regularization of services. He further contended that even if there are vacancies available in private educational institutions, as per the policy decision of the Government, the surplus staff in private aided colleges, will be deputed to the needy colleges where their services are required. This policy decision is to protect the interest of the Government and save the money of the Government.

On behalf of the 3rd respondent, counter affidavit is filed stating that after the retirement of Sri K. Ramulu, Commerce Lecturer, the

petitioner was appointed as part-time lecturer, and was paid a consolidated pay of Rs. 4,500/- per month till the last year, and now he is being paid Rs. 5,000/- per month. The petitioner applied for the permanent post of lecturer, and they have considered his case along with other eligible persons, and the process of selection is pending with the Government. In fact, they have already by letter dated 29.11.2004 forwarded the particulars of the petitioner to the Commissioner of Collegiate Education, but still no orders thereon have been passed.

Heard the learned counsel for the petitioner, the learned Government Pleader for Education for respondents 1 and 2 and the learned counsel for respondent 3.

Though the petitioner contends that he is working in a sanctioned post, and is entitled to seek regularization of his services in the said aided post, the fact remains, which is admitted to by the petitioner also that he was appointed temporarily on part-time basis, and in fact, it is the case of the respondents, that he was being paid a consolidated salary. This apart, it is the case of respondents 1 and 2, that the very appointment of petitioner is illegal, as he was appointed by respondent 3 without following the procedure and the Rules and that while the ban on appointments was in force.

In **Secretary, State of Karnataka v. Umadevi** (1 supra), the apex Court, having considered the issue whether High Court can direct the authorities to regularize/absorb the services of employees appointed without following the regular procedure of selection, held thus:

> "Persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, have been approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The courts have not

> always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called "litigious employment", has risen like a phoenix seriously impairing the constitutional scheme. While directing that appointments, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. Such an argument fails when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution. Merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad hoc* employees who by the very nature of their appointment, do not acquire any right."

Since the petitioner was appointed by respondent 3, without following the procedure and the Rules and that while the ban on appointments was in force, no direction as sought for by the petitioner can be given to the respondents to regularize his services in the aided post.

Be that as it may, it is the case of respondent 3 that the petitioner applied for appointment in the permanent post of Lecturer, and his case was considered along with other eligible candidates, and the proposals with regard to the selection are pending with the Government, and in fact, they have already vide letter dated 29.11.2004, had forwarded the particulars of the petitioner to the Commissioner of Collegiate Education, as sought for by them, but till date no action thereon had been taken.

Since the proposals with regard to selection are said to be

pending before the Government, I deem it appropriate to dispose of the writ petition with the following directions:

The 1st respondent is directed to consider and take necessary action on the proposals sent by the 3rd respondent-College, vide letter dated 29.11.2004, and pass appropriate orders and communicate the same to the 3rd respondent-College, expeditiously.

Accordingly, the writ petition is disposed of. No costs.

N.V. RAMANA, J

Date: 09.10.2007
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[1] (2006) 4 SCC 1